

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE**

DISTRICT NO 1, MARINE
ENGINEERS BENEFICIAL
ASSOCIATION, AFL-CIO

and

Case 20-CB-11282-1

ANTHONY PASSARO, AN
INDIVIDUAL

Lucile L. Rosen, Esq., San Francisco,
CA, for the General Counsel
Edward M. Gleason, Esq., and *Richard*
W. Gibson, Esq., of *Beins, Axelrod &*
Kraft, P.C., Washington, D.C., for the
Respondent
Anthony Passaro, Charging Party, Los
Angeles, CA, *pro se*

DECISION

Statement of the Case

Gerald A. Wacknov, Administrative Law Judge: Pursuant to notice a hearing in this matter was held before me in San Francisco, California, on October 23, 24 and 25, 2001. The charge was filed by Anthony Passaro, an individual, on April 14, 2000. On May 24, 2001, the Regional Director for Region 20 of the National Labor Relations Board (Board) issued a Complaint and Notice of Hearing alleging violations by District No. 1, Marine Engineers' Beneficial Association, AFL-CIO (Respondent or Union) of Section 8(b)(1) (A) of the National Labor Relations Act, as amended (Act). The Respondent, in its answer to the complaint, duly filed, denies that it has violated the Act as alleged. At the hearing the Respondent amended its answer to assert that the complaint should be dismissed on procedural grounds because it is not sufficiently related to the underlying charge filed by Passaro.

The hearing was adjourned indefinitely pending the outcome of another unrelated Board proceeding in which issues arguably relevant to the instant matter were being considered. Thereafter, by order dated October 18, 2002, the hearing in this matter was closed.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from Counsel for the General Counsel (General Counsel), and counsel for the Respondent. Upon the entire record, and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following:

Findings of Fact

I. Jurisdiction

.5 Keystone Shipping Company (Keystone) is an employer engaged in the business of providing transport services, and at times material herein has been a member of a multi-employer bargaining association called the Tanker Service Committee (TSC). As a constituent member of TSC, Keystone is party to and bound by the terms of a collective bargaining agreement between TSC and the Respondent covering licensed engineers, effective by its terms from June 12, 2000 through June 15, 2005. During the 12-month period preceding the issuance of the complaint, Keystone provided shipping services valued in excess of \$50,000 to the United States Department of Defense. It is admitted and I find that Keystone is, and at all material times has been, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Labor Organization Involved

 The parties stipulated, and I find, that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. Alleged Unfair Labor Practices

A. Issues

 The principal issues in this proceeding are whether the complaint is deficient in that it does not contain allegations sufficiently related to the underlying charge, and whether the individuals referred by the Union through its hiring hall are employees within the meaning of Section 2(3) of the Act.

B. Facts

1. The Complaint

 Anthony Passaro, an individual, filed the following charge on April 14, 2000:

During the six months preceding the filing of this charge, the above-named labor organization breached its duty of fair representation by losing the membership application of Anthony Passaro; misapplying and not uniformly enforcing its own dispatching rules and thereby discriminating against Passaro by failing to dispatch him for work.

 By letter dated June 19, 2000, the Regional Director for Region 20 of the Board dismissed the charge, as follows:

Contrary to the charge, the investigation showed that the Union did not lose your application for classification as a Group III hiring hall registrant. Rather, the Union informed you that it would not process the application because you failed to submit two letters of recommendation, as required by its rules for applicants

with your qualifications. Moreover, the investigation disclosed no instance where the Union deviated from its hiring hall rules to deny you a job dispatch on an arbitrary or discriminatory basis. I am, therefore, refusing to issue complaint in this matter.

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Passaro appealed the dismissal,¹ and the Office of Appeals, in sustaining Passaro's appeal, determined that complaint should be issued on the theory that the Union was operating an unlawful hiring hall by requiring individuals who seek job referrals through the hiring hall to simultaneously apply for membership in the Union as a pre-condition for such referrals. Thus, the complaint alleges that :

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Respondent's hiring hall rules for referring employees pursuant to the [hiring hall] provision ...require registrants for referral for employment also to make application for membership in Respondent as a condition of registration for referral for employment.²

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While both the charge and complaint contain allegations relating to the operation of the hiring hall, I do not believe that this is a sufficient nexus to warrant, absent a specific amended charge, the resulting complaint allegation.

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It is clear, as the record abundantly shows, that Passaro very much wanted to become a member of the Union. ³ Indeed, he complained in his charge that the Union was putting stumbling blocks in his path to prevent him from becoming a union member by, among other things, losing his application for membership. The theory upon which the complaint was issued neither provides a potential remedy for Passaro, nor relates to his concerns that the Union is misapplying its rules and singling him out for arbitrary reasons in an effort to keep him from becoming a member.

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¹ Passaro filed another charge alleging similar discriminatory treatment. This charge was also dismissed and apparently the dismissal was not appealed.

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² Union membership is difficult to attain, and it is quite common that licensed engineer officers of all classes will have been referred out through the hiring hall for several years without being voted in as members; thus, it appears that applying for membership and receiving referrals is no guarantee of membership. In addition, there is another type of hiring hall procedure whereby licensed officers may utilize the hiring hall without applying for membership, but it appears that these individuals are not eligible for referral until all the other members or applicants for membership have been given the opportunity to select available positions.

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³ The General Counsel candidly stated, in the presence of Passaro at the hearing, pursuant to a colloquy initiated by the undersigned administrative law judge, that, "In fact, I'll be willing to state for Mr. Passaro that he wanted to make application, he wanted to be a member of the union. So this [complaint] is...something the General Counsel is bringing, more than Mr. Passaro"; she further stated that although "Passaro did not allege that...the Union was operating a discriminatory hiring hall," nevertheless, the complaint contemplated the protection of other potential applicants for referral who, unlike Passaro, may not have wanted to apply for membership, and therefore the complaint was "broader than just the interest of the Charging Party"; finally, she stated that Passaro is "certainly aware of the fact that the issues he initially raised by the filing of this charge and a subsequent charge are not going to be addressed by the court in this case."

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On their face, the charge and the complaint allegation in question appear to be mutually exclusive, as an individual who voluntarily seeks membership in a union is clearly not complaining that the union is “requiring” him to become a member. Accordingly, I find that the charge does not “closely relate” to the complaint allegation as required by well-established Board and court precedent. *Nickles Bakery of Indiana*, 296 NLRB 927 (1989); *Redd-I, Inc.*, 290 NLRB 1115 (1988); *Detroit Newspaper Agency*, 330 NLRB 524 (2000); *Lotus Suites, Inc., v. NLRB*, 32 F.3d 588, 590-91 (D.C. Cir. 1994). Therefore, I shall dismiss the complaint on this basis.

2. Status of Second Assistant Engineers and Third Assistant Engineers

A. Background and Stipulations

The issue framed by the complaint is whether the Union is operating a discriminatory hiring hall affecting “employees.” It is the Respondent’s position that none of the individuals it refers out of its hiring hall are employees within the meaning of Section 2(3) of the Act; rather, each and every individual who is referred through the hiring hall is a “supervisor” as defined in Section 2(11) of the Act. As such individuals are specifically excluded from the Act’s coverage, the complaint must be dismissed on this basis.

The parties entered into a number of stipulations that are set forth or summarized in the following paragraphs.

The Union’s hiring hall at issue in this case only refers jobs to U.S. Coast Guard Licensed Marine Engineers to fill jobs aboard U.S. Flag “Deep Sea” ocean going vessels. All U.S. Coast Guard Licensed Engineers are deemed “Officers” within the meaning of Coast Guard Statutes and Regulations as well as established principles of maritime laws and treaties.

Unlicensed merchant seamen aboard merchant vessels are not “Officers” and instead are members of the vessel’s crew. Unlicensed merchant seamen in the engine department include, but are not limited to “firemen,” “oilers,” “wipers,” “electricians,” and “qualified members of the engine department” (“QMED”).

Pursuant to Title 46 of the United States Code, all unlicensed seamen are required to hold merchant mariners documents (“MMDs”). As set forth in 46 U.S.C. § 7305, all applicants for MMDs are required to take, before issuance of the MMD, an “oath that the applicant will perform faithfully and honestly all the duties required by law, and will carry out the lawful orders of superior officers.”

Pursuant to Title 46 of the United States Code, merchant mariners working aboard vessels engaged in foreign and intercoastal voyages are required to sign documents referred to as “Shipping Articles.” As set forth in 46 U.S.C. § 10304 the Articles must include a provision stating in substance that:

the seamen agree to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the master, or of an individual who lawfully succeeds the master, and of their superior officers in everything related to the vessel, and the stores and cargo of the vessel, whether on board, in boats, or on the shore.

All licensed engineering officers are “superior officers” to the unlicensed seamen.

For at least the past 30 years all of the deep sea licensed marine engineer jobs referred by the Union’s hiring hall have been covered by collective bargaining agreements containing the following provision:

The parties agree that all of the engineers to whom this Agreement is applicable, are “supervisors” within the meaning of the Labor Management Relations Act of 1947 as amended.

U.S. Coast Guard licensed Chief Engineer and First Assistant Engineer positions referred from the Union’s hiring hall are all supervisory within the meaning of Section 2(11) of the Act.

The General Counsel, having entered into the foregoing stipulations, including the stipulation that the chief engineer and the first assistant engineer positions are supervisory, maintains that the second assistant engineer and the third assistant engineer, although clearly “superior officers” to the unlicensed crew members, are not supervisors within the meaning of Section 2(11) of the Act.

B. Additional Record Evidence

Thomas Percival is currently manager of labor relations and vessel operations for Matson Navigation Company. Matson operates steam and diesel vessels between Hawaii and the West Coast of the United States and the West Coast of Asia. Percival has been employed in a managerial capacity for various shipping lines since 1990. He has worked as a licensed marine engineer for over 21 years, and has worked as third, second and first assistant engineer. Currently he holds a chief engineers license.

Percival testified that the asset value of a particular ship, including cargo and containers, approaches a billion dollars, and the officers on each ship, including the licensed marine engineers, as an extension of Matson’s management, are hired to insure the safety of the crew, the ship, and its cargo. It is Matson’s policy to employ permanent chief engineers and first assistant engineers rather than to obtain such individuals through the Union’s hiring hall, and to obtain its second and first assistant engineers through the Union’s hiring hall. According to Percival the second and third assistant engineers are Matson’s future chief and first assistant engineers, “So we measure these people, we’re looking for the officers that are on the ships to assess, and we do a formal evaluation process.” Percival testified that Matson also seeks the advice and opinions of the second and third assistant engineers regarding the unlicensed crew, as these crew members are also “prospective engineering personnel.”⁴

Percival testified that every ship is required to have a set of operating manuals, called ISM manuals. These manuals, which are apparently voluminous, are updated on a regular basis, and the portions of the manual relating to specific operations of the ship are kept at various locations where they are convenient to those operations, including the engine room. While there is scant record evidence regarding the specific contents of the manuals, apparently the manuals are very specific and state when and how and at what intervals each duty or

⁴ There is no further record evidence of the manner or extent to which this evaluation process takes place, and Percival is the only witness who so testified; it appears, insofar as the record shows, that only Matson evaluates unlicensed crew members as prospective officers.

function should be carried out. The provisions of the manuals are to be adhered to, and, according to Percival, there had better be a good explanation for deviating from them. Percival characterized the provisions of the manual as “guidelines” to be followed on a consistent and routine basis unless something else becomes of more immediate importance.

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Percival testified that that “standing orders” issued by a chief engineer is basically a document containing general guidelines setting out what the chief engineer expects in the way of notification of matters that are handled by the other licensed engineers. This document reflects the personal preference of the chief engineer, and therefore will vary from ship to ship; in addition, it may vary according to the confidence of the chief engineer in the other licensed engineers. It would be very unlikely that standing orders would limit the ability of the licensed engineers to assign or direct unlicensed crew.

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In addition to Percival, the Union called as witnesses various individuals who, collectively, through their extensive experience over many years, have occupied every position in the engineering department, as officers and crew on every size and type of merchant marine deep sea ocean going vessel.⁵ Their testimony was extensive, consistent and, I find, credible. Therefore, although the record is lengthy, a recounting of their testimony in summary form seems appropriate.

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Obtaining an engineer officers license is a difficult and lengthy process requiring three years of formal schooling in one of five or six maritime academies and/or a combination of many years of schooling and on-the-job training. Graduates from the academies graduate with a bachelor of science degree, as well as a Coast Guard license as a third assistant engineer or some other third officer position. It is a coveted license and not easily earned. The progression to a higher level is also a difficult and lengthy process: moving up one position, for example from third assistant engineer to second assistant engineer, requires 365 days of sailing time. All engineering officers are qualified to perform all the operations in the engine room, including all operations that the unlicensed firemen, oilers, reefers, wipers, electricians, and QMEDs perform. It is common that individuals who are nominally second or third assistant engineers on a particular vessel may have a first assistant or even a chief engineer license, but have elected to “work below their license” because the more preferable jobs are not available. Licensed officers have separate quarters from the unlicensed crew and, unlike the unlicensed crew, each officer has his own room. Officers have a different mess hall and lounge. Their amenities aboard ship are generally better, for example, ship stewards change their towels and linens and clean their rooms. And the pay of officers is considerably higher than that of the unlicensed crew.

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Each vessel is licensed by the Coast Guard, and the Coast Guard determines the minimum manpower, both licensed and unlicensed, aboard each ship.

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Unlicensed personnel are obtained by the various shipping companies through the hiring halls of three different unions, and do not utilize the Union's hiring hall. The unlicensed crew must have certifications from the Coast Guard to perform specific functions on board the ship for which they are hired.

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⁵ This includes the testimony of Passaro, the Charging Party, who was initially called as a witness by the General Counsel only for the purpose of establishing the hiring hall application procedure, but was then questioned by Respondent's counsel regarding his experience both as an engineering officer and a member of the crew.

The deep sea vessels of the type involved in this proceeding are approximately 900 to 1200 feet in length, and some 75 to 100 feet wide. The engine rooms of these vessels are the size of a three-story house with a maze of dangerous and complex interrelated mechanical and electrical components. The officer on watch, including the second assistant and third assistant engineers, is in charge of the engine room and sails the vessel during his watch. Because, for example, turning a valve somewhere may have a dangerously adverse effect "downstream," the officer on watch must know exactly what the unlicensed personnel, also on watch, are doing. Thus, a cardinal rule is that none of the unlicensed crew will do anything, even a routine procedure, on his own volition, without first being instructed to do so by the officer. While there are tasks and monitoring of equipment that must routinely be performed, "routine" is not the norm and there is nothing routine about the daily activities of the engineers because of the frequency with which unanticipated exigencies will occur. Second or third assistant engineers may have more or less authority to handle non-routine or emergency situations on their own while on watch, depending on the standing orders of the chief engineer. For example, a second or third assistant engineer may be authorized by the chief engineer's standing orders to call an off-duty electrician to perform a particular unscheduled job, even though this would result in overtime pay for the electrician. At the end of each watch the officer in charge will sign the log book verifying the activity during his watch.

Second and third assistant engineers work with the tools of the trade. As most jobs cannot be accomplished by only one person, a second or third assistant engineer works together with one or more unlicensed crew members about 90 percent of the time. When such jobs are being performed, the licensed engineer is always in charge, and the unlicensed personnel must follow his instructions; this is true even if the unlicensed crew member disagrees with the instruction. Because the voyages are lengthy and the work environment is confined, the officers, and indeed all personnel, understand the importance of getting along and the immediacy of diffusing personality or other inter-personal conflicts so that confrontations will not occur. It appears that the necessity of having to report a crew member for anything but the most serious matters may reflect adversely upon the reporting officer as evidence of an inability to handle the situation. Accordingly, the occasions when an officer may reprimand a crew member by reporting an incident to the chief engineer and/or by logging the incident in the ship's log, are anecdotal. The effectiveness of handling work-related personnel matters in this manner seems to be a reflection of the military type of chain of command between officers and crew members. Thus, as the authority of an officer to take such unusual action and report the matter to a superior officer is clearly understood, such occurrences arise infrequently.

The officers are held solely responsible for the work they assign to the crew members; if routine maintenance is overlooked or if something breaks down because it has been repaired incorrectly, the officer and not the crew member assisting him is accountable for the deficiency and bears the blame. This is why the officers are careful to monitor the work of the crew members each step of the way. Crew members are required to have the proper Coast Guard certification that they are qualified to perform the duties of, for example, an electrician or oiler. However, crew members come aboard with varying degrees of experience and abilities, and it is not unusual for a crew member to lack the experience to perform a particular job even though the job is generally included within his job description or certification. One of the functions of an officer is to provide crew members with continuing on-the-job training. In this regard, the officer will determine when such on-the-job training may interfere with more immediate considerations. Accordingly, if an officer is not confident of the ability of a crew member, or if

the work needs to be done expeditiously rather than in a training mode, the officer may simply get another crew member to do the job; or, if necessary, the officer may advise the chief engineer or the first assistant engineer that a particular crew member seems unqualified to perform the work in question, and request the assistance of a different crew member. Again, exercising this latter option seems to be an unusual occurrence.

Other than as noted above, officers do not evaluate the qualifications or competence of crew members. However, on occasion, crew members who have performed a particular job under the direction of an officer may ask the officer to sign off on a document that is then utilized by the crew member to establish his competence to do the job in question; the document may be submitted to the crew member's union or the Coast Guard as documentation of the individual's on-the-job experience. Apparently, this process is currently being utilized to a greater extent than in the past.

Passaro, the nominal Charging Party in this matter, has worked as both a licensed engineer and an unlicensed crew member in the engine room. Passaro's testimony is generally consistent with that of the other witnesses called by the Union and summarized above.⁶ Thus, Passaro testified that when a licensed engineer is standing watch he has complete control and authority over the engine room. The licensed engineer, as the superior officer of the unlicensed crew member, directs his work, and has the authority to pull him off a specific job and assign him another job. It is up to the licensed engineer to assess the situation and decide whether the unlicensed person is capable of handling any particular job. The unlicensed crew member is required to assist the licensed engineer in every way possible. Similarly, the licensed engineer should provide instruction to the unlicensed crew member whenever possible, and verbally warn or reprimand him when such warnings or reprimands are warranted. Also the licensed engineer on watch will "oftentimes" give the unlicensed man the throttle, putting him in control of the engine, to insure that he has experience in this operation.

Passaro testified that, "When I come on watch with...an unlicensed person, I try to find out what that person knows and if I feel that if he can't do something, then I try to instruct him, and then if he can't do it...and can't seem to learn, then I will try to take care of that myself...but I try to get them to do as much as they're capable of doing, and a lot of them can do quite a bit...if they've passed the Coast Guard exams, they can all do a minimum amount." Passaro testified that he gives an "informal test" to people he has never worked with to determine their general knowledge, and he accompanies them on their rounds when they monitor the various systems to determine what they can or can not do; thus, he may vary the rounds of crew members and may not let some do as much as others, depending upon his evaluation of their abilities.

C. Analysis and Conclusions

The evidence presented in this proceeding shows the following: Second assistant engineers and third assistant engineers are licensed officers with significant schooling, training and education. They are superior officers to the unlicensed personnel, and their separate and private quarters, shipboard amenities and considerably higher pay further emphasizes their distinct and superior status from that of the unlicensed crew. They are solely accountable for all work of the crew members that they direct, and take the blame for the deficiencies of the

⁶ However, Passaro testified that in some situations it may become necessary for a crew member to do things on his own: for example, a fireman may be in a situation where a burner needs adjusting and cannot wait for the licensed engineer to give him permission to do so.

unlicensed personnel. Thus, the work product of the unlicensed crew members is a direct reflection of the skills of the second assistant engineers and third assistant engineers, who readily understand that they bear this responsibility and must pay the consequences when some assignment they delegate to a crew member has not been carried out or has been done improperly. These licensed officers must necessarily exercise "independent judgment" in assessing and evaluating the nature of the of the required work in conjunction with the skills of the subordinate unlicensed personnel who are available to assist, as it appears that there are no manuals or standing orders that would guide them in this endeavor. Then, acting upon such assessments, they may assign the work in accordance with their evaluation of the abilities of the unlicensed personnel, or do the work themselves in an instance where they have no confidence in the abilities of a crew member, or request the services of a different crew member in whom they do have confidence.

Selecting people to do particular work is evidence of supervisory authority. See *Superior Bakery, Inc., v. NLRB*, 893 F.2d 493, 496 (2d Cir. 1990). Similarly, to be accountable for another's deficiencies may in and of itself establish such authority. See *Schnurmacher Nursing Home v. NLRB*, 214 F.3d 260, 267 (2d Cir. 2000).

It is clear that the exercise of supervisory functions may be dependent upon the policies and procedures of a particular employer and/or the standing orders of the chief engineer on a particular vessel. Thus, a chief engineer may, in his discretion, give rather wide latitude to licensed engineers in handling non-routine engine room situations while on watch. Conversely, a chief engineer may micro-manage the engine room.⁷ The Board has found that second and third licensed engineers are supervisors. *Crest Tankers, Inc.*, 287 NLRB 628 (1987); *Sun Refining and Marketing Co.*, 301 NLRB 642 (1991). On the other hand, the Board found in *Chevron Shipping Co.*, 317 NLRB 379 (1995), upon which the General Counsel relies, that the second and third licensed engineers are not supervisors. The facts in *Chevron* upon which the Board relied are dissimilar to the facts in the instant case and, in my opinion, preclude a meaningful comparison.

Further, in *Chevron* the Board stated:

We are not unmindful that the licensed junior officers exercise substantial responsibility for ensuring that the ships' functions are carried out properly, and that the crew and cargo remain safe. We believe, however, that their authority to direct the work of the crew is based on their greater technical expertise and experience, rather than being an indication of supervisory authority.

However, the Supreme Court in *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706 (2001), has found that greater technical expertise and experience (which licensed engineers clearly possess over the crew members they direct), is indeed a factor to be evaluated, rather than discounted, in determining supervisory authority.

It is clear that there is no categorical answer to the status of second assistant and third assistant engineers as each case is fact specific. Given the facts presented by the Union in this proceeding, when applied in a manner consistent with the Supreme Court's *Kentucky River* decision (supra), I find that the Union has demonstrated that second assistant and third assistant licensed engineers are statutory supervisors.

⁷ For example, one witness testified that a chief engineer could issue a standing order directing the officer on watch to turn off the engine room coffee pot at 0700 hours.

Further, this case is a hiring-hall case and specifically relates to licensed engineers referred by the Union to employers having an agreement with the Union as follows:

.5 The parties agree that all of the engineers to whom this Agreement is applicable, are "supervisors" within the meaning of the Labor Management Relations Act of 1947 as amended.⁸

10 Accordingly, I conclude that under all the circumstances it is reasonable for the Union to believe that all individuals referred through its hiring hall are Section 2(11) supervisors, that all are hired as Section 2(11) supervisors by the employers who request them, and that they will exercise the authority of Section 2(11) supervisors in the performance of their duties. Further, it seems clear that the individuals who elect to utilize the hiring hall and are required to apply for union membership understand that the hiring hall is for the exclusive referral of licensed engineers
15 who are supervisors, as they are only referred to employers who have formally acknowledged their supervisory status. There being no evidence to the contrary, I shall also dismiss the complaint on this basis.

20 The complaint is dismissed in its entirety.

Conclusions of Law

- 25 1. Keystone Shipping Company is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Union has not violated the Act as alleged in the complaint.

30 On these findings of fact and conclusions of law, I issue the following recommended:

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⁸ It is important to note that, as stipulated at the hearing, the employer in *Chevron*, directly hired its own permanent licensed and unlicensed personnel, did not obtain the licensed engineers through the Union's hiring hall, and has no agreement with the Union providing that the licensed engineers are supervisors within the meaning of the Act.

ORDER⁹

The complaint is dismissed in its entirety.

Date: January 27, 2003

Gerald A. Wacknov
Administrative Law Judge

⁹ If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.